

PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS

Members of the public may submit written comments on draft advisory opinions.

DRAFT C of ADVISORY OPINION 2012-35 is now available for comment. It was requested by Michael R. Wofford on behalf of Global Transaction Services Group, Inc., and is scheduled to be considered by the Commission at its public meeting on December 20, 2012. The meeting will begin at approximately 10:00 a.m. and will be held in the 9th Floor Hearing Room at the Federal Election Commission, 999 E Street, NW, Washington, DC. Individuals who plan to attend the public meeting and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Commission Secretary, at (202) 694-1040.

If you wish to comment on DRAFT C of ADVISORY OPINION 2012-35, please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand delivery or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by 5 p.m. (Eastern Time) on December 19, 2012.
- 4) The Commission will generally not accept comments received after the deadline. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

REQUESTOR APPEARANCES BEFORE THE COMMISSION

The Commission has implemented a pilot program to allow advisory opinion requestors, or their counsel, to appear before the Commission to answer questions at the open meeting at which the Commission considers the draft advisory opinion. This program took effect on July 7, 2009.

Under the program:

- 1) A requestor has an automatic right to appear before the Commission if any public draft of the advisory opinion is made available to the requestor or requestor's counsel less than one week before the public meeting at which the advisory opinion request will be considered. Under these circumstances, no advance written notice of intent to appear is required. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2).
- 2) A requestor must provide written notice of intent to appear before the Commission if all public drafts of the advisory opinion are made available to requestor or requestor's counsel at least one week before the public meeting at which the Commission will consider the advisory opinion request. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2). The notice of intent to appear must be received by the Office of the Commission Secretary by hand delivery, email (Secretary@fec.gov), or fax ((202) 208-3333), no later than 48 hours before the scheduled public meeting. Requestors are responsible for ensuring that the Office of the Commission Secretary receives timely notice.
- 3) Requestors or their counsel unable to appear physically at a public meeting may participate by telephone, subject to the Commission's technical capabilities.
- 4) Requestors or their counsel who appear before the Commission may do so only for the limited purpose of addressing questions raised by the Commission at the public meeting. Their appearance does not guarantee that any questions will be asked.

FOR FURTHER INFORMATION

Press inquiries: Judith Ingram
Press Officer
(202) 694-1220

Commission Secretary: Shawn Woodhead Werth
(202) 694-1040

Comment Submission Procedure: Kevin Deeley
Acting Associate General Counsel
(202) 694-1650

Other inquiries:

To obtain copies of documents related to Advisory Opinion 2012-35, contact the Public Records Office at (202) 694-1120 or (800) 424-9530, or visit the Commission's website at <http://saos.nictusa.com/saos/searchao>.

ADDRESSES

Office of the Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Office of General Counsel
ATTN: Kevin Deeley, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

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December 18, 2012

MEMORANDUM

AGENDA ITEM

TO: The Commission

FROM: Anthony Herman
General Counsel

Kevin Deeley *KS*
Acting Associate General Counsel

Robert Knop *RMK*
Assistant General Counsel

Esther D. Heiden *EDH by RMK*
Attorney

Subject: AO 2012-35 (Global Transaction Services Group, Inc.) – Draft C

For Meeting of 12-20-12

SUBMITTED LATE

Attached is a proposed draft of the subject advisory opinion (Draft C). We have been asked to have this draft placed on the Open Session agenda for December 20, 2012.

Attachment

1 ADVISORY OPINION 2012-35

2
3 Michael R. Wofford
4 Global Transaction Services Group, Inc.
5 11235 Davenport Street, Suite 111
6 Omaha, NE 68154
7

DRAFT C

8 Dear Mr. Wofford:

9
10 We are responding to your advisory opinion request on behalf of Global Transaction
11 Services Group, Inc. (“GTSG”), concerning the application of the Federal Election Campaign
12 Act (the “Act”) and Commission regulations to the proposal to initiate contributions to political
13 committees by text message and then process them using credit or debit cards. GTSG asks
14 whether it may process the proposed small-dollar contributions using the wireless user’s credit or
15 debit card and forward them to recipient political committees. The Commission concludes that
16 GTSG’s proposed process for receiving and forwarding small-dollar contributions to political
17 committees is permissible under the Act and Commission regulations.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter and supplementary
20 information received on October 24, 2012, your comment received on December 5, 2012, and
21 information you provided at the Commission’s Open Meeting on December 6, 2012.¹

22 GTSG is an incorporated technology company that provides services in a number of
23 areas, including mobile payments, transaction fraud security, and e-commerce. GTSG has
24 developed a process to allow wireless users to initiate contributions of \$50 or less via text
25 messages and then charge them to the wireless user’s credit or debit card. GTSG currently offers

¹ To the extent that any information provided at the Commission’s Open Meeting on December 6, 2012 differed from information provided in the advisory opinion request or in the requestor’s comment on the advisory opinion drafts, the information provided at the Commission’s Open Meeting is “definitive” in the formulation of this advisory opinion. See *Notice of New Advisory Opinion Procedures and Explanation of Existing Procedures*, 74 FR 32160, 61 (July 7, 2009).

1 a similar process for donations to charitable organizations; this is the first time that GTSG
2 proposes to make this process available to candidates and political committees.

3 GTSG has credit and debit card transaction relationships with card processors. Under
4 GTSG's proposed plan, GTSG will act as manager for the transaction between the contributor,
5 the credit or debit card companies, and the recipient political committees.

6 GTSG will offer its services to political committees and will enter into service contracts
7 with its political committee customers. GTSG will only accept potential political committee
8 customers if they are "in good standing" with the Commission and with appropriate State
9 election authorities. Additionally, GTSG may develop eligibility criteria based upon commercial
10 considerations and therefore may decide to accept only proposals from some political
11 committees and not others.

12 GTSG will charge its political committee customers a fee for using its services, to be
13 deducted from the total amount of the contribution before GTSG forwards the contribution to the
14 political committee. GTSG will evaluate market data to determine a competitive fee schedule
15 for its political committee customers. Although GTSG anticipates a lower fee for services
16 provided to political committees relative to its non-political or commercial customers, it does not
17 expect that the difference in fees will be substantial.

18 Once GTSG accepts a political committee as a customer, GTSG will assign the candidate
19 or political committee a unique keyword. To initiate a contribution, a wireless user² will send a

² In Advisory Opinion 2010-23 (CTIA I), the Commission explained the meaning of the terms "wireless subscriber" and "wireless user." A "wireless subscriber" refers to an individual who a wireless service provider bills; a "wireless user" refers to all individuals who are included in the subscriber's billing plan, including, for example, a family or group plan, but who are not directly responsible for payment to the "wireless service provider."

1 text message using a pre-assigned “keyword” to a “common short code.”³ After sending the text
2 message, the wireless user will receive reply text messages to verify that he or she intends to
3 make the contribution, as well as a certification of the wireless user’s eligibility to make
4 contributions.⁴ The wireless user must reply affirmatively to both statements.

5 GTSG will next send a text message to the wireless user with a link to GTSG’s
6 contribution web page. To make a contribution, the wireless user will enter his or her credit or
7 debit card information and the amount of the contribution onto a web form on the page. GTSG’s
8 proposed process will reject any single contribution over \$50 and will reject a contribution of
9 any amount that will result in the wireless user making contributions that, in the aggregate,
10 exceed \$50.⁵ GTSG states that the only credit or debit card information requested of the
11 contributor will be the card number, expiration date, and the three- or four-digit security code.
12 The credit or debit card information will then be transmitted securely to the card processor for
13 authorization. The contribution will appear on the wireless user’s credit or debit card statement.

14 The credit or debit card information and the two contribution text message verifications
15 described above are the only information that GTSG will request from the wireless user. Though
16 the credit card processor will have the cardholder’s name and address, that information will not
17 be available to GTSG as a result of the credit card transaction. And GTSG represents that credit
18 card processors do not pass this information on to GTSG pursuant to well-established financial

³ For example, to make a contribution to U.S. Senate candidate John Smith, a wireless user would text the keyword “Smith” to a common short code. A common short code is a five- or six-digit number to which wireless users can send text messages to access mobile content, such as “313131.” See Advisory Opinion 2010-23 (CTIA I).

⁴ The eligibility certification would be similar to the following: “Press Donate Now to process your contribution to the [candidate’s name] campaign. This certifies you are at least 18 years, using your own funds, not a Federal Contractor and are not a foreign national. Terms at gtsgglobal.com/t.”

⁵ The requestor does not specify the period of time during which the \$50 aggregate limit will be in place, but presumably intended it to be per election cycle or per calendar year. Whether the applicable period is the election cycle or calendar year is not central to the Commission’s analysis.

1 transaction security standards. GTSG, however, will instead use the mobile phone number used
2 to initiate the contribution to derive the wireless user's name and address and will then provide
3 that information to the recipient political committees.

4 After receiving the funds from the credit or debit card company, GTSG will track the
5 funds by unique keyword and place the funds into separate bank accounts for each recipient
6 political committee. GTSG will then transmit the contribution to the political committee
7 customer, less any associated fees (discussed above), along with the amount and date of the
8 contribution, the wireless user's ten-digit phone number, name, address, and last four digits of
9 the credit or debit card, and the fact that the wireless user attested to his or her intent and
10 eligibility to make the contribution. GTSG will also maintain a tally of contributions made from
11 each mobile phone number, and will provide this information available to the recipient political
12 committee customer.

13 ***Question Presented***

14 *Would the proposed process outlined in the request allow Global Transaction Services*
15 *Group, Inc. to process small-dollar donations and distribute them to the recipient political*
16 *committee customers?*

17 ***Legal Analysis and Conclusion***

18 Yes, GTSG's proposal to receive small-dollar donations and distribute them to recipient
19 political committee customers, as outlined in its request, is permissible under the Act and
20 Commission regulations.⁶

⁶ The Act and Commission regulations impose certain requirements on treasurers of political committees. For example, a "treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the [Act's] contribution limitations." 11 CFR 103.3(b). This advisory opinion does not address the recipient political committees' requirements under GTSG's proposal.

1 In considering the use of technology, including credit and debit cards, to make
2 contributions, the Commission has previously “interpreted the Act and its regulations in a
3 manner consistent with contemporary technological innovations . . . where the use of the
4 technology would not compromise the intent of the Act or regulations.” Advisory Opinion 1999-
5 09 (Bradley for President) (approving Federal matching funds for contributions received over the
6 Internet through the use of a credit card). In a number of advisory opinions, the Commission has
7 specifically approved the use of credit cards to make contributions. *See, e.g.*, Advisory Opinion
8 1995-09 (NewtWatch); Advisory Opinion 1978-68 (Seith for Senate Committee); *see also*
9 Explanation and Justification for Final Rules on Matching Credit Card and Debit Card
10 Contributions in Presidential Campaigns, 64 FR 32394 (June 17, 1999).

11 The Commission understands GTSG’s question to raise three issues under the Act and
12 Commission regulations relating to the receiving and forwarding of contributions for political
13 committees: (1) whether the contributions received for political committees are timely
14 forwarded; (2) whether contributor information must be forwarded for contributions of \$50 or
15 less; and (3) whether the requestor will properly account for political contributions deposited by
16 GTSG before they are forwarded to recipient political committees.

17 *Timeliness of Forwarded Contributions*

18 The Act and Commission regulations require every person who receives a contribution
19 for an authorized political committee to forward the contribution to the committee’s treasurer
20 within ten days after receiving the contribution. 2 U.S.C. 432(b)(1); 11 CFR 102.8(a). The Act
21 and Commission regulations further require every person who receives a contribution of \$50 or
22 less for a political committee that is not an authorized committee to forward the contribution to

1 the committee's treasurer within 30 days after receiving the contribution. 2 U.S.C. 432(b)(2)(A);
2 11 CFR 102.8(b)(1).

3 The Commission considers contributions made by credit or debit card to be received as of
4 the date that the credit or debit card holder authorizes his or her card to be charged with the
5 contribution. See Advisory Opinion 2012-17 (Red Blue T LLC, ArmourMedia, Inc., and m-
6 Qube, Inc.) ("m-Qube I") (citing Advisory Opinion 1990-04 (American Veterinary Medical
7 Association)). GTSG states in its request that it will forward all contributions, less applicable
8 fees, to the political committee customer within seven days, along with contribution totals and
9 the supporting documentation discussed above. Because GTSG will forward all contributions
10 received within ten days, its proposal meets the forwarding timelines required by the Act and
11 Commission regulations.

12 *Contributor Information and Excessive Contributions*

13 For any contribution over \$50, the Act and Commission regulations require that the
14 person forwarding the contribution forward to the political committee's treasurer the name and
15 address of the person making the contribution and the date of receipt of the contribution.
16 2 U.S.C. 432(b)(1), (2)(B); 11 CFR 102.8(a), (b)(2). Further, treasurers of political committees
17 must "keep an account of (1) all contributions received by or on behalf of such political
18 committee; (2) the name and address of any person who makes any contribution in excess of
19 \$50, together with the date and amount of such contribution by any person; [and] the
20 identification of any person who makes a contribution or contributions aggregating more than
21 \$200 during a calendar year, together with the date and amount of any such contribution."
22 2 U.S.C. 432(c)(1)-(3); see also 11 CFR 110.4(c). Commission regulations also require that
23 treasurers of political committees "examin[e] all contributions received for evidence of illegality

1 and for ascertaining whether contributions received, when aggregated with other contributions
2 from the same contributor, exceed the [Act's] contribution limitations." 11 CFR 103.3(b).

3 In prior advisory opinions, the Commission has approved arrangements designed to
4 ensure that corporations do not forward illegal contributions to political committees and thereby
5 enable treasurers to comply with the Commission's regulations. See 11 CFR 103.3(b); Advisory
6 Opinion 2009-32 (Jorgenson); Advisory Opinion 2007-04 (Atlatl); Advisory Opinion 2004-19
7 (DollarVote); Advisory Opinion 2002-07 (Careau). Although "it is ultimately the responsibility
8 of the political committee to obtain the identity of contributors and to prevent excessive and
9 prohibited contributions," to ensure the committee can meet its obligation, it is incumbent upon
10 the service provider to forward "the appropriate information." See Advisory Opinion 1991-26
11 (Versatel); see also Advisory Opinion 1991-20 (Call Interactive).

12 The requestor states that it will use a system to derive the wireless user's name and
13 address from his or her mobile number, and will forward that information to the recipient
14 political committees, along with the ten-digit phone number, last four digits of the credit or debit
15 card, and the date and amount of the contribution. As proposed, wireless users using GTSG's
16 system to make credit and debit card contributions will only be able to enter a contribution
17 amount in the amount of \$50 or less; the system will reject a contribution of any amount that
18 would result in a wireless user making aggregate contributions exceeding \$50. The Commission
19 concludes that the proposal described above complies with the provisions of the Act and
20 Commission regulations related to forwarding of contributions.

21 *Segregation of Contributions*

22 The Act and Commission regulations prohibit corporations from making a contribution in
23 connection with a Federal election. See 2 U.S.C. 441b(a); 11 CFR 114.2(b)(1). A "contribution"

1 includes “any gift, subscription, loan, advance, or deposit of money or anything of value made
2 by any person for the purpose of influencing any election for Federal office.”

3 2 U.S.C. 431(8)(A)(i) and 11 CFR 100.52(a); *see also* 2 U.S.C. 441b(b)(2) and 11 CFR
4 114.2(b)(1).

5 GTSG will track the funds received from credit card processors by the short code and
6 unique keyword associated with a recipient committee when the contribution is initiated via text
7 message. In addition, GTSG will place the funds into separate bank accounts for each recipient
8 political committee. Therefore GTSG’s proposal thus satisfies the Act and Commission
9 regulations. *See* 2 U.S.C. 441b; 11 CFR 114.2(b); Advisory Opinion 1999-22 (Aristotle
10 Publishing); Advisory Opinion 2012-30 (Revolution Messaging).

11 This response constitutes an advisory opinion concerning the application of the Act and
12 Commission regulations to the specific transaction or activity set forth in your request. *See*
13 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or
14 assumptions presented, and such facts or assumptions are material to a conclusion presented in
15 this advisory opinion, then the requestor may not rely on that conclusion as support for its
16 proposed activity. Any person involved in any specific transaction or activity which is
17 indistinguishable in all its material aspects from the transaction or activity with respect to which
18 this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B).
19 Please note that the analysis or conclusions in this advisory opinion may be affected by
20 subsequent developments in the law, including, but not limited to, statutes, regulations, advisory

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1 opinions, and case law. The cited advisory opinions are available on the Commission's website,
2 www.fec.gov, or directly from the Commission's Advisory Opinion searchable database at
3 <http://www.fec.gov/searchao>.

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On behalf of the Commission,

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Caroline C. Hunter
Chair

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